

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

SNOHOMISH COUNTY FARM BUREAU,

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

**CASE No. 12-3-0010**

**(SCFB II)**

**ORDER ON MOTIONS**

This matter came before the Board on cross-motions for dispositive ruling pursuant to WAC 242-03-560 and on Petitioner's motion to supplement the record.

**I. ORDER ON DISPOSITIVE MOTIONS**

WAC 242-03-555 **Dispositive Motions** provides, in pertinent part:

- (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted.

WAC 242-03-560 **Dispositive Motion on Notice and Public Participation** provides:

Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. Such motion shall be filed by the deadline for dispositive motions established in the prehearing order. The presiding officer shall determine whether the panel will decide the notice and public participation issues(s) on motion or whether to continue those issues to the hearing on the merits.

Petitioner Snohomish County Farm Bureau and Respondent Snohomish County have each filed a motion for dispositive ruling on Legal Issues 2, 3, and 4. The Board decides the

1 motions based on the written submittals of the parties without oral argument. In ruling on the  
2 motions, the Board has before it:

- 3 • Petitioner's Motion for Disposition under WAC 242-03-560 on Legal Issues 2, 3, and  
4 4 (Jan. 2, 2013)
- 5 • Snohomish County's Dispositive Motions (Jan. 2, 2013)
- 6 • Petitioner's Response to Respondent's Dispositive Motions (Jan. 14, 2013)
- 7 • Snohomish County's Response to Petitioner's Motion for Disposition on Legal Issues  
8 2, 3 and 4 (Jan. 16, 2013)
- 9 • Petitioner's Reply to Respondent's Response to Petitioner's Motion for Disposition  
10 under WAC 242-03-560 on Legal Issues 2, 3, and 4 (Jan. 23, 2013)
- 11 • Snohomish County's Reply to Petitioner's Response to the County's Dispositive  
12 Motions (Jan. 23, 2013)
- 13
- 14

## 15 **Legal Issue 2 – Broad Dissemination of Proposals**

16 The Prehearing Order states Legal Issue 2 as follows:

- 17
- 18 2. Does Ordinance 12-047 fail to comply with RCW 36.70A.140 because the
- 19 county has not established a public participation program which
- 20 disseminated Ordinance 12-047 to numerous entities which Snohomish
- 21 County knows will be significantly affected by the ordinance [including *inter*
- 22 *alia* Juniper Beach Water District (Leque Island), Camano Water Systems
- 23 Association (Leque Island), Washington Waterfowl Association (Leque
- 24 Island), Shari Madamba (Leque Island), Snohomish County Farm Bureau
- 25 (Leque Island), Diking District No. 5 (Smith Island), Naeem Iqbal (Smith
- 26 Island Tree Farm), Lois Clark (River Delta Horse Farm on Smith Island),
- 27 Buse Timber (Smith Island), Dagmar's Landing (Smith Island), Snohomish
- County Farm Bureau (Smith Island), Pacific Topsoils (Smith Island), Dike
- District 1 (Ebey Island), and Dwayne Lane (Island Crossing)]?

### 28 Applicable Law

29 The Farm Bureau alleges non-compliance with RCW 36.70A.140 which provides, in relevant  
30 part:

31 Each county and city that is required or chooses to plan under RCW  
32 36.70A.040 shall establish and broadly disseminate to the public a public

1 participation program identifying procedures providing for early and continuous  
2 public participation in the development and amendment of comprehensive land  
3 use plans and development regulations implementing such plans. The  
4 procedures shall **provide for broad dissemination of proposals** and  
5 alternatives, opportunity for written comments, **public meetings after effective**  
6 **notice**, provision for open discussion, communication programs, information  
7 services, and consideration of and response to public comments.

8 The GMA contains a specific provision concerning the notice procedures in the required  
9 public participation program. RCW 36.70A.035(1) provides:

10 The public participation requirements of this chapter shall include notice  
11 procedures that are reasonably calculated to provide notice to property owners  
12 and other affected and interested individuals, tribes, government agencies,  
13 businesses, school districts, and organizations of proposed amendments to  
14 comprehensive plans and development regulation. Examples of reasonable  
15 notice provisions include:

- 16 a) Posting the property for site-specific proposals;
- 17 b) Publishing notice in a newspaper of general circulation in the county,  
18 city, or general area where the proposal is located or that will be affected  
19 by the proposal;
- 20 c) Notifying public or private groups with known interest in a certain  
21 proposal or in the type of proposal being considered;
- 22 d) Placing notices in appropriate regional, neighborhood, ethnic or trade  
23 journals;
- 24 e) Publishing notice in agency newsletters or sending notice to agency  
25 mailing lists, including general lists or lists for specific proposals or  
26 subject areas.

27 The Farm Bureau did not cite non-compliance with the notice requirement of RCW  
28 36.70A.035(1) as a basis for the allegations of Legal Issue 2. The Board therefore looks  
29 solely at RCW 36.70A.140.

### 30 Positions of the Parties

31 The Farm Bureau asserts the County's Index "does not show dissemination of Ordinance  
32 12-047 to any of the 13 persons specifically listed in the statement of legal issue 2."<sup>1</sup> The  
Farm Bureau argues the County's failure to send notice to the 13 listed persons, all having

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<sup>1</sup> Petitioner's Dispositive Motion, at 2.

1 direct interests in the Smith and Leque Islands restoration projects, demonstrates failure to  
2 properly implement the County's public participation program and a deliberate intent to shut  
3 interested parties out of the process.<sup>2</sup> The Farm Bureau seeks a summary determination  
4 that the County has violated RCW 36.70A.140.  
5

6 The County asserts the Farm Bureau is in effect asserting a violation of the notice  
7 provisions of the GMA at RCW 36.70A.035, not the requirement to adopt a public  
8 participation program described in RCW 36.70A.140. The County seeks summary dismissal  
9 of Legal Issue 2 because "RCW 36.70A.140 is not the basis for specific challenges to GMA  
10 legal notice requirements."<sup>3</sup>  
11

12  
13 Board Discussion and Analysis

14 RCW 36.70A.140 requires each County planning under the GMA to adopt and disseminate  
15 a public participation program. The program must provide for "broad dissemination of  
16 proposals." The Board finds Snohomish County has adopted procedures for public  
17 participation in the development and consideration of amendments to the comprehensive  
18 plan. SCC Chap. 30.73 and 30.74 set out a program of notice and public hearings for  
19 proposed comprehensive plan amendments. The process includes a planning commission  
20 public hearing with ten-days' prior notice including publication in the official county  
21 newspaper and on the County's official website.<sup>4</sup> The process further requires a public  
22 hearing before the County Council with similar published notice augmented with mailed  
23 notice to anyone who commented or provided testimony during department or planning  
24 commission review.<sup>5</sup>  
25  
26  
27  
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30 <sup>2</sup> Petitioner's Response, at 1-2.

31 <sup>3</sup> County Dispositive Motion, at 3, citing *Spraitzar v. Island County*, WWGMHB No. 08-2-0023, Final Decision  
32 and Order (Nov. 10, 2008), at 8; and *Heikkila/Cook v. City of Winlock*, WWGMHB No. 09-2-0013c, Final  
Decision and Order (Oct. 8, 2009), at 11.

<sup>4</sup> SCC 30.73.050(1)(a). Additional requirements for mailing to properties in the vicinity apply to area-wide  
rezones, redesignations, or county-initiated site-specific rezones and are not applicable to this case.

<sup>5</sup> SCC 30.73.070(2).

1 No evidence has been provided indicating the County failed to comply with its adopted  
2 process. The Farm Bureau bases its motion on the assumption that “broad dissemination”  
3 obligates the County to reach every interested party. The Bureau cites no authority for the  
4 proposition that “broad dissemination” requires individual outreach to each known interested  
5 person or organization. The Board notes Webster’s Dictionary defines “dissemination” as “to  
6 spread abroad as if sowing seed.” Thus, “broad dissemination” requires that proposals be  
7 generally published and made available to the public, in contrast to the individual notice that  
8 the Farm Bureau claims is mandated.  
9

10  
11 The Board finds the Farm Bureau’s contention that the County’s process did not provide  
12 “broad dissemination” of Ordinance 12-047 is without merit. The County’s record clearly  
13 establishes that the proposal to amend the comprehensive plan was published in The  
14 Herald and made broadly available to interested citizens or entities on the County’s  
15 website.<sup>6</sup> Ordinance No. 12-047 contains the following conclusions:

16 E. The proposed amendments to the LU and NE chapters of the GPP of the  
17 GMACP have been broadly disseminated and opportunities have been provided  
18 for written comments and public hearing after effective notice.

19 F. The county complied with state and local requirements for public participation  
20 for the adoption of comprehensive plan amendments under the GMA and  
21 chapter 30.73 SCC.

22 G. The county council considered the entire hearing record and written  
23 testimony during the public comment period and oral testimony given during  
24 public hearings before the planning commission and the county council.  
25

26 The Board finds the Farm Bureau has failed to carry its burden of demonstrating non-  
27 compliance with the RCW 36.70A.140 requirement for a public participation program that  
28

29  
30 <sup>6</sup> Index 131, 132, and 128 (showing distribution to public and specific listed entities – including Snohomish  
31 County Farm Bureau – of notice for County Council’s October 2012 public hearing on Amended Ordinance 12-  
32 047); Index 78 and 79 (showing distribution to public and specific listed entities of Addendum No. 35 to the  
FEIS regarding Amended Ordinance 12-047); Index 84, 88, and 89 (showing publication via The Herald and  
County website of notice and agenda for the Planning Commission’s April 24, 2012, public hearing on  
Amended Ordinance 12-047); Index 62 and 63 (showing publication of notice and agenda for the Planning  
Commission meeting on Amended Ordinance 12-047 on March 27, 2012).

1 provides "broad dissemination of proposals." The Farm Bureau has failed to demonstrate  
2 Snohomish County violated its adopted program in any way. The Farm Bureau has failed to  
3 cite any authority for a requirement that the proposed amendments be individually  
4 "disseminated" to the 13 listed persons. The Board concludes the Farm Bureau's motion  
5 must be denied.  
6

7 The Board finds and concludes the County's record establishes compliance with the RCW  
8 36.70A.140 requirement for a public participation program allowing "broad dissemination of  
9 proposals." The record also demonstrates the County provided "broad dissemination" in its  
10 consideration of Ordinance 12-047. The County's motion to dismiss Legal Issue 2 is  
11 granted.  
12

#### 13 Conclusion

14 The Farm Bureau's motion for a finding of non-compliance with RCW 36.70A.140 as set  
15 forth in Legal Issue 2 is **denied**. The County's motion for dispositive ruling dismissing Legal  
16 Issue 2 is **granted**. Legal Issue 2 is **dismissed**.  
17  
18

#### 19 **Legal Issue 3 – Response to Citizen Comments**

20 The Prehearing Order sets forth Legal Issue 3 as follows:  
21

- 22 3. Does Ordinance 12-047 fail to comply with RCW 36.70A.140 because the  
23 county did not respond to public comments made by Petitioner and others  
24 regarding Ordinance 12-047?

#### 25 Applicable Law

26 Petitioner alleges non-compliance with RCW 36.70A.140 which requires the County to  
27 establish a public participation program for development of comprehensive plan  
28 amendments and provides, in relevant part:  
29

30 The procedures shall provide for broad dissemination of proposals and  
31 alternatives, opportunity for written comments, public meetings after effective  
32 notice, provision for open discussion, communication programs, information  
services, and **consideration of and response to public comments**.

1 Positions of the Parties

2 The Farm Bureau's motion identifies seven items in the Amended Index showing comments  
3 made by representatives of the Bureau<sup>7</sup> and states none of these comments have been  
4 responded to by the County. The Farm Bureau seeks a summary determination that the  
5 County has violated the RCW 36.70A.140 mandate for "consideration of and response to  
6 public comments."  
7

8 The County asserts Legal Issue 3 must be summarily dismissed because (a) the Farm  
9 Bureau did not raise this challenge in its public comments and therefore lacks standing; (b)  
10 RCW 36.70A.140 does not require a specific response to each comment; and (c) in any  
11 event, the record shows the County considered and responded to the Farm Bureau's  
12 concerns.  
13  
14

15 Board Discussion and Analysis

16 The Board finds the Farm Bureau's allegations of non-response to comments are limited to  
17 the subject matter of its petition – the threatened saltwater or freshwater inundation of  
18 designated agricultural land by restoration projects – and confined to the nexus of its public  
19 testimony. Within that nexus, the Farm Bureau has "standing" to assert violations of public  
20 process requirements as one of its legal theories.  
21

22 However, the Board finds the Farm Bureau's contention that the County did not respond to  
23 its comments is without merit. It is well-settled that the public participation program required  
24 by RCW 36.70A.140 does not mandate that a jurisdiction provide a specific answer to each  
25 public comment. In *Bremerton/Alpine v. Kitsap County*,<sup>8</sup> the Board found the most  
26 appropriate definition of "respond" within the context of RCW 36.70A.140 is "to react in  
27 response."  
28

29 Applying this definition means only that citizen comments must be considered,  
30 and where appropriate, jurisdictions must take action in response to those  
31

32 <sup>7</sup> Index 133 and 145 (comments by Ed Moats); Index 94, 96, 134, and 145 (comments by Farm Bureau President Ed Husmann); Index 95 (comment by Farm Bureau board member Ty Costa).

<sup>8</sup> CPSGMHB No. 95-03-0039c/98-3-0032c, Final Decision and Order (Feb. 8, 1999) at 24.

1 comments and questions... "Response" may, but need not, take the form of an  
2 action, either a modification to the proposal under consideration, or an oral or  
3 written response to the [citizen] comment or question.

4 Response to public comments does not require accepting or agreeing with them – only  
5 taking them into consideration. For example, in *Hood Canal, et al. v Kitsap County*,<sup>9</sup> the  
6 Board found the county staff had included petitioners' proposal in a matrix of alternatives for  
7 analysis by the county. The Board found it was apparent from the county's record that the  
8 comments were considered "although they were not given the weight to which KAPO  
9 believes they were entitled." The Board commented, "[U]nder the GMA, the County has a  
10 duty to provide reasonable opportunity for public input but no duty to accept citizen  
11 comments or adopt them."<sup>10</sup>  
12

13  
14 The Board finds the Snohomish County Council at its October 17, 2012 public hearing in  
15 fact discussed and voted on proposed amendments to Ordinance 12-047 submitted by the  
16 Farm Bureau.<sup>11</sup> The record reflects the amendments were submitted by Ed Moats and Ed  
17 Husmann for the Farm Bureau.<sup>12</sup> Councilmember Koster moved for inclusion of the Farm  
18 Bureau's proposed amendments, Councilmember Gossett seconded, Councilmember  
19 Koster spoke for the amendments and Councilmember Somers spoke against them. The  
20 amendments were defeated by a vote of 3-1.<sup>13</sup> The Board finds the County considered and  
21 responded to the Farm Bureau's proposal.  
22

23  
24 The Board finds and concludes the County complied with the RCW 36.70A.140 requirement  
25 to "consider and respond to public comments" by discussing and voting on the Farm  
26 Bureau's proposed amendments.  
27

28 <sup>9</sup> CPSGMHB No. 06-3-0012c, Final Decision and Order (Aug 28, 2006), at 14.

29 <sup>10</sup> *Id*; see also *Petso II v. City of Edmonds*, CPSGMHB No. 09-3-0005, Final Decision and Order (Aug. 17,  
30 2009), at 17 ("The Board has previously explained that 'consideration and response to public comment' does  
31 not require that the government provide an answer to every question or concern raised by participants . . .  
32 'response to public comments' does not mean that each participant's question must be specifically answered,  
but rather, the jurisdiction must take citizen input into consideration in its decision-making").

<sup>11</sup> County's Dispositive Motion, at 14.

<sup>12</sup> Index 133, 136.

<sup>13</sup> Index 146, at 6 (partial transcript of vote on Farm Bureau amendments).



1 In *Keesling VI v. King County*,<sup>14</sup> the Board commented:

2  
3 The Board notes that many of the petitions filed with the Board challenge the  
4 public *process* of a City or County, when in fact the petitioner does not agree  
5 with the *decision* made by the City or County. In two recent cases before the  
6 Board<sup>15</sup> citizens allege that sections of the GMA related to public participation  
7 have been violated due primarily to disagreement with the final decision. As is  
8 the case before the Board in this matter, the Petitioners in [the cited cases]  
9 were aware of the actions the cities were taking, and were active participants in  
10 that process. While Petitioners may be disappointed in the outcome of the  
11 process, unless there is a clear violation of GMA provisions, a challenge based  
12 on public participation should not be used as a tool to prolong outcomes of  
13 decisions made by a City or County.

14 The Board concludes Legal Issue 3 must be **dismissed**.

15 Conclusion

16 The Farm Bureau's motion for a finding of non-compliance with RCW 36.70A.140 as set  
17 forth in Legal Issue 3 is **denied**. The County's motion for dispositive ruling dismissing Legal  
18 Issue 3 is **granted**. Legal Issue 3 is **dismissed**.

19 **Legal Issue 4 – Coordination with Neighboring Counties**

20 The Prehearing Order sets forth Legal Issue 4 as follows:

- 21  
22 4. Does Ordinance 12-047 fail to comply with RCW 36.70A.100 because  
23 Snohomish County has not coordinated Ordinance 12-047 and made it  
24 consistent with the comprehensive plans of neighboring counties?

25 Applicable Law

26 RCW 36.70A.100 provides:

27 The comprehensive plan of each county or city that is adopted pursuant to  
28 RCW 36.70A.040 shall be coordinated with, and consistent with, the  
29 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties  
30

31 <sup>14</sup> CPSGMHB No. 07-3-0027, Final Decision and Order (Sep. 25, 2007) at 10,

32 <sup>15</sup> Citing *Robert Cave and John Cowen v. City of Renton*, CPSGMHB Case No. 07-3-0012, Final Decision and Order (July 30, 2007) and *Skills, Inc. v. City of Auburn*, CPSGMHB Case No. 07-3-0008c, Final Decision and Order (July 18, 2007).

1 or cities with which the county or city has, in part, common borders or related  
2 regional issues.

3 Positions of the Parties

4 The Farm Bureau's motion states the Amended Index shows "no communication with Island  
5 County, Skagit County, King County or Chelan County seeking coordination of Ordinance  
6 12-047 for consistency with their comprehensive plans." The Farm Bureau seeks a  
7 summary determination that the County has violated RCW 36.70A.100.  
8

9 The County's motion asserts Legal Issue 4 must be summarily dismissed because the Farm  
10 Bureau did not raise this challenge in its public comments and therefore lacks standing. The  
11 County's motion is based on WAC 242-03-555 and the GMA standing requirements of RCW  
12 36.70A.280(2)(b) and (4).  
13

14 In response to the Farm Bureau's motion, the County argues RCW 36.70A.100 is not  
15 subject to disposition under WAC 242-03-560. Further, according to the County, the Farm  
16 Bureau has failed to provide either facts or evidence to support its assertion of non-  
17 compliance with RCW 36.70A.100.  
18

19 Board Discussion and Analysis

20 The Farm Bureau's motion is not subject to disposition under WAC 242-03-560, which  
21 allows a dispositive motion "to decide a challenge to compliance with the notice and public  
22 participation requirements of the act." RCW 36.70A.100 is a substantive requirement of the  
23 GMA, calling for coordination and consistency among comprehensive plans. It is not a  
24 "notice and public participation" requirement subject to WAC 242-03-560.  
25

26 Further, the Farm Bureau's dispositive motion fails because the Bureau has not identified  
27 any portion of the County's action that creates an inconsistency with the plan provisions of  
28 any other County. In *Hensley v. City of Woodinville*<sup>16</sup> the Board explained:  
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<sup>16</sup> CPSGMHB No. 96-3-0031, Final Decision and Order (Feb. 25, 1997), at 12.

1 The burden rests on a petitioner to identify those provisions of the challenged  
2 comprehensive plan that are uncoordinated or inconsistent. To do this,  
3 [petitioner] must identify the provision in the [jurisdiction's] Plan and explain how  
4 it is uncoordinated with or inconsistent with a provision in another jurisdiction's  
5 comprehensive plan.

6 Consistency as defined by the Board means "provisions are compatible with each other –  
7 they fit together properly. In other words, one provision may not thwart another."<sup>17</sup> For  
8 example, in *Shoreline III & IV v. Snohomish County*<sup>18</sup> the Board found the City of  
9 Shoreline's capital facilities planning and level of service standards were thwarted by the  
10 County's designation of an adjacent Urban Center with access limited to Shoreline's road  
11 system.

12  
13 However, the Farm Bureau here has identified no provisions of Ordinance 12-047 that  
14 conflict with any identified provisions of plans of adjacent counties. Even when bringing a  
15 motion on a limited record, the burden is on the Petitioner to provide facts demonstrating  
16 non-compliance. Therefore the Farm Bureau's motion must be denied, first, because it is not  
17 properly brought under WAC 242-03-560, and, second, because merely alleging lack of  
18 Index reference to inter-county communication does not meet Petitioner's burden.

19  
20  
21 The County's dispositive motion asserts the Farm Bureau lacks standing to raise the issue  
22 of non-compliance with RCW 36.70A.100 because the Farm Bureau's participation before  
23 the County was not reasonably related to this issue. The GMA allows standing to  
24 petitioners based on their participation in the public process. RCW 36.70A.280(2)(b)  
25 provides: "A petition may be filed only by: ... (b) a person who has participated orally or in  
26 writing before the county or city regarding the matter on which review is being requested...."  
27 RCW 36.70A.280(4) further requires that in order to establish participation standing, a  
28 petitioner "must show that his or her participation before the county or city was reasonably  
29 related to the person's issues as presented to the board."  
30  
31

32  

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<sup>17</sup> *Chevron USA Inc. v. Hearings Board*, 123 Wn App. 161, 167.

<sup>18</sup> CPSGMHB Nos. 09-3-0013c and 10-3-0011c, Final Decision and Order (April 25, 2011) at 36-37.

1 Reviewing the letters and testimony on behalf of the Farm Bureau in the County's record,  
2 the Board finds the Bureau made no reference to inconsistency with the comprehensive  
3 plan of any neighboring county.

4  
5 The Board's decision in *Alpine v. Kitsap County*<sup>19</sup> is directly on point. In *Alpine*, petitioner  
6 APAC raised Issue 22:

7 Issue 22. Is the Plan inconsistent with the plans of Mason and Jefferson  
8 Counties and the Cities of Port Orchard and Bremerton, with which the County  
9 has common borders or related regional issues, contrary to the requirements of  
10 RCW 36.70A.100?

11 The County moved to dismiss Issue 22, as related to the plans of Jefferson and Mason  
12 Counties. APAC responded by pointing to numerous Index items informing the County of  
13 concerns. The Board found only one of the Index items – a November 9, 1997 letter to the  
14 Board of County Commissioners - was a comment by APAC. The Board noted: "That letter  
15 contains no mention of Plan consistency with Mason and Jefferson Counties," and  
16 concluded, "APAC's participation before the County, as exhibited in the November 9 letter,  
17 is not reasonably related to these issues before the Board."  
18

19  
20 The Board's *Alpine* ruling was cited with approval by the court in *Wells v. WWGMHB*.<sup>20</sup>

21 [T]he [CPSGMHB] dismissed an issue relating to the consistency of Kitsap  
22 County's comprehensive plan with the plans of adjoining county governments  
23 because the single letter that petitioner submitted to the county "contains no  
24 mention of Plan consistency with Mason and Jefferson Counties."

25 The Farm Bureau's participation in this case has involved much more than one letter. Yet in  
26 all the recorded testimony and comment, the Bureau did not raise the issue of conflict with  
27 plans of any adjacent county. Nor have the Bureau's briefs on these cross-motions provided  
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29  
30  
31  
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<sup>19</sup> CPSGMHB No. 98-3-0032c, Order on Dispositive Motions (Oct. 7, 1998), at 6.

<sup>20</sup> 100 Wn. App. 657, 674, 999 P.2d 405 (2000)

1 any nexus between the RCW 36.70A.100 requirement and the subject matter of the  
2 Bureau's testimony and comments.<sup>21</sup>

3  
4 The Board finds the Farm Bureau's participation did not include the issue of inconsistency  
5 between the County's proposed action and the comprehensive plans of adjacent counties.  
6 The Board concludes the Farm Bureau lacks standing to challenge compliance with RCW  
7 36.70A.100. Therefore Legal Issue 4 must be dismissed.  
8

9 Conclusion

10 For the reasons set forth above, the Farm Bureau's dispositive motion concerning Legal  
11 Issue 4 is **denied**. The Board concludes the Farm Bureau lacks standing to assert Legal  
12 Issue 4. The County's motion is granted, and Legal Issue 4 is **dismissed**.  
13

14  
15 **II. ORDER ON MOTION TO SUPPLEMENT THE RECORD**

16 The Farm Bureau moves to supplement the record and the County opposes the motion. In  
17 considering the motion, the Board has before it:

- 18
- 19 • Petitioner's Motion to Supplement the Record under WAC 242-03-565 (Jan. 2, 2013)  
20 and an attached letter from Edwin F. Moats to Alethea Hart and Martin Rollins (Dec.  
21 24, 2012)
  - 22 • Snohomish County's Response to Petitioner's Motion to Supplement the Record  
23 (Jan. 16, 2013)  
24

25 Applicable Law

26 WAC 242-03-565 permits the filing of motions to allow for supplemental evidence and  
27 provides, in part: (Emphasis added)  
28

29

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30 <sup>21</sup> By contrast, the Board's Order on Motions in Case No. 12-3-0008 (Dec. 17, 2012), at 6, notes a direct nexus  
31 between the Farm Bureau's Legal Issue in that case and its public process testimony. The testimony  
32 concerned the "negative effects on agriculture, dike and levees, and water supply." The Legal Issue alleged  
five entities responsible for agriculture, dikes and levees, and water supply in the affected area had not been  
consulted as required under the relevant SMA provisions. The Board found the Bureau's legal theory was  
reasonably related to the subject matter of its comments and allowed standing.

1 **Generally, the board will review only documents and exhibits taken from**  
2 **the record developed by the city, county, or state in taking the action that**  
3 **is the subject of review by the board** and attached to the briefs of a party. A  
4 party by motion may request that the board allow the record to be  
5 supplemented with additional evidence.

6 (1) A motion to supplement the record shall be filed by the deadline established  
7 in the prehearing order, **shall attach a copy of the document, and shall state**  
8 **the reasons why such evidence would be necessary or of substantial**  
9 **assistance to the board** in reaching its decision, as specified in RCW  
10 36.70A.290(4). The board may allow a later motion for supplementation on  
11 rebuttal or for other good cause shown.

12 The requirement referenced in WAC 242-03-565 comes from RCW 36.70A.290(4), which  
13 provides: (Emphasis added)

14 The board shall base its decision on the record developed by the city, county, or  
15 the state and **supplemented with additional evidence if the board**  
16 **determines that such additional evidence would be necessary or of**  
17 **substantial assistance** to the board in reaching its decision.

18 As with all motions, the burden is on the moving party to demonstrate the evidence sought  
19 to be added is necessary or of substantial assistance to the Board.

#### 20 Board Discussion and Analysis

21 By letter to the County, the Farm Bureau seeks to add a sequence of documents relevant to  
22 each of the Legal Issues in the case. However, copies of the documents are not attached to  
23 the motion as required by WAC 242-03-556(1). The Board cannot fairly decide whether a  
24 document is likely to be necessary to its determination of a case without reviewing the  
25 proffered document. For this reason alone, the motion must be denied. Nevertheless, the  
26 Board adds the following comments.

#### 27 Legal Issue 1 Documents.

##### 28 Proposed Supplements 1, 4, and 5:

29 The FLUM is a part of the County's Comprehensive Plan of which the Board may take  
30  
31  
32

1 official notice.<sup>22</sup> The amendments offered by the Farm Bureau at the October 17, 2012  
2 public hearing are already in the record.<sup>23</sup> If the Bureau wishes to transcribe any portion of  
3 the record, the County must make the audio tapes available for transcription.<sup>24</sup>  
4

5 Proposed Supplements 2 and 3:

6 The Farm Bureau requests the inclusion of two groups of documents concerning the Leque  
7 Island Setback Levee and the Smith Island Restoration Project. These documents were  
8 previously proffered for supplementation in Case No. 12-3-0008 and the Bureau asserts:  
9 "[T]he requested supplementation illustrates the subtle connection between the instant  
10 case, 12-3-0010, and its virtual companion, 12-3-0008."<sup>25</sup>  
11

12 At the outset of this case, the Board proposed to coordinate consideration of the two cases.  
13 However, the parties both objected. The Prehearing Order reflects the discussion at the  
14 prehearing conference.<sup>26</sup>  
15

16 The Board determined that it would not coordinate the schedule for this petition  
17 with Case No. 12-3-0008, the petition of Snohomish County Farm Bureau  
18 challenging provisions of the County's Shoreline Master Program, and the  
19 cases will not be consolidated.

20 As the cases are neither consolidated nor coordinated, each must be presented and  
21 decided on its own record. The Board will not supplement the record in the present case  
22 with material from Case No. 12-3-0008 without satisfaction of the requirements of WAC 242-  
23 03-565 which specifies attachment of documents. The proposed supplementation is denied.  
24

25 Legal Issue 2, 3, and 4 Documents.

26 Legal Issues 2, 3 and 4 are dismissed. The requested supplementation is therefore denied.  
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30 <sup>22</sup>WAC 242-03-630(4).

31 <sup>23</sup> Index 133.

32 <sup>24</sup> Audio record of hearing at Index 136. See WAC 242-03-510(2) and Corrected Prehearing Order, at 3 ("A party wishing to submit the record of Council meetings ... is responsible to arrange the transcription of relevant portions at the requester's expense.").

<sup>25</sup> Petitioner's Motion to Supplement, at 2.

<sup>26</sup> Corrected Prehearing Order (Dec. 19, 2012), at 1.

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III. ORDER

The Board rules on the motions of the parties as set forth above:

- Legal Issues 2, 3 and 4 are **dismissed**.
- Except as provided above for Items 1, 4, and 5, the requested supplementation is **denied**.

DATED this 31<sup>st</sup> day of January, 2013.

\_\_\_\_\_  
Margaret A. Pageler, Board Member

\_\_\_\_\_  
Cheryl Pflug, Board Member

\_\_\_\_\_  
William P. Roehl, Board Member

Note: This is not a final decision in this case. Pursuant to WAC 242-03-830(1) no motion for reconsideration may be filed.